IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Crl.MC.No. 1835 of 2007()

CC.586/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

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(CRIME NO.462/1998 OF THE OTTAPALAM POLICE STATION)

PETITIONER: 2ND ACCUSED

NAZAR, S/O MARAKKAR,
ALIKKAL HOUSE, PAVUKKONAM, OTTAPALAM,
PALAKKAD DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE

THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
OTTAPALAM POLICE STATION - THORUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR ADV,SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.1835 Of 2007

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Dated this the 29th day of June, 2007

ORDER

The petitioner is aggrieved by Annexures A and B orders. He was the 5th accused in a prosecution for offences punishable under Secs.143,147,148, 294(b) and 506(ii) read with Sec.149 IPC. Altogether, there were 6 accused persons. The prosecution case was that on 20.10.98 at 7 p.m. all the accused were members of an unlawful assembly at the public road near the house of CW1. Armed with deadly weapons like iron rod and in prosecution of their common object, they allegedly abused CW1 through micro phone which was fixed in the jeep and also threatened to kill CW1 showing a deadly iron rod. This was allegedly done after the election petition filed by CW1 was dismissed by the competent court.

2. Investigation was conducted and final report was filed. By application dated 4th June, 2002, the Assistant Public Prosecutor made a request to the learned Magistrate under Section 321 Cr.P.C. for permission to withdraw the case and to grant leave for such withdrawal. The learned Public Prosecutor had received an order from the Government to inform him that the Government had no objection

against the withdrawal. The learned Public Prosecutor, after going through the records, was of opinion that it will be in the interests of justice to withdraw the case. According to him, he had considered the time of occurance, delay in filing the complaint, the uncertainty about the identity of the accused and also the contention that the ingredients of Secs.294 and 506(ii) IPC will not be attracted in the case. It was, thus, that he applied for withdrawal. The learned Magistrate by Annexure A order took the view that the leave sought was not liable to be granted. It would appear that the learned Magistrate felt that the change in the political executive after the election to the State Legislature was the only reason on which the application for withdrawal was made. The petitioner challenged the said order before the Sessions Court in Revision and the learned Judge by Annexure B order upheld the order of the learned Magistrate.

3. The learned counsel for the petitioner submits that both courts below totally mis-directed themselves in law and have not correctly understood and applied the principles which must weigh with the courts while considering an application under Section 321 Cr.P.C.

4. The law on the point appears to be well settled. It is in exercise

of executive powers of the State that the Prosecutor chooses to withdraw from the prosecution. It is the Prosecutor who has to exercise his independent discretion in the matter. No authority can give dictation to him. He must consider all the relevant inputs and come to appropriate decision. In doing so, he should not be actuated by mala fides. Only the interests of justice must weigh with him. He has to act as Minister of Justice and not in any partisan or biased manner.

5. The Court's jurisdiction is not to sit in appeal over the decision made by the learned Prosecutor. If the application is bona fide and is not vitiated by any circumstances, the Court will not refrain from granting the requisite leave under section 321.Cr.P.C. In the facts and circumstances of this case, I do not find any circumstances to conclude that the learned Prosecutor had made the application for withdrawal without properly adverting to all the relevant circumstances in a proper manner. Of course, indications were available to show that there was change in the political executive. The mere fact that there was change in the political executive is no reason, ipso facto, to justify the withdrawal, or to refuse to grant permission to withdrawal. The learned counsel for the petitioner submits that the fact that the learned

Public Prosecutor had exercised his discretion correctly is well fortified by Annexure C judgment in which after the trial of the co-accused, they were found not guilty and acquitted. I have been taken through Annexure C judgment also. I do, in these circumstances, agree with the learned counsel for the petitioner that Annexures A and B orders do deserve interference. The courts below appear to have committed the error of assuming appellate powers and not merely supervisory powers, in the interests of justice. That crucial error committed does call for correction and the challenge raised in this petition must succeed.

6. In the result this Crl.M.C. is allowed. Annexures A and B orders are set aside. It is held that the application by the learned Public Prosecutor must have been accepted by the learned Magistrate . The case against the petitioner shall consequently stand terminated.

(R.BASANT, JUDGE)

sj